Appendix A

COMMONWEALTH OF MASSACHUSETTS

SUPREME JUDICIAL COURT
FOR THE COMMONWEALTH.

MIDDLESEX COUNTY November 7, 1966-December 2, 1966

No. 13613

COMMONWEALTH

v.

LEWIS F. HADLEY

Present: WILKINS, C.J., SPALDING, CUTTER, SPIEGEL, & REARDON, JJ.

CUTTER, J. The code enforcement inspector of the Malden board of health filed a complaint in the District Court alleging that, on June 7, 1965, Hadley "did wilfully impede or obstruct an inspection . . . by the" code enforcement inspector upon certain premises in Malden. In the District Court, Hadley was found guilty of violating the Sanitary Code of the Department of Public Health,[1] art. 1,

[1] The Sanitary Code, art. 1, reg. 3, was adopted by the department on September 13, 1960. See G. L. c. 111, § 5, as amended by St. 1957, c. 678, § 1, St. 1959, c. 522, and St. 1960, c. 172. Section 5 reads in part: (see 2d par. as amended in 1959) "Said department shall adopt . . . public health regulations to be known as the . . . sanitary code, which may provide penalties for violations . . . not exceeding five hundred dollars for any one offence . . . . The code shall deal with matters affecting the health and well-being of the public . . . in subjects over which the department takes . . . responsibility. . . . Local boards of health shall enforce said code in the same manner

reg. 3.1.[2] He appealed. Upon this appeal, Hadley filed a waiver of trial by jury, and was tried upon a statement of agreed facts. The trial judge found him guilty, imposed a fine of $50 and reported the case to this court upon the following issue: "[w]hether the protections embodied in the fourth and fourteenth amendments to the Constitution of the United States shelter the owner-occupier of a single family . . . [house] from prosecution for refusing to admit municipal inspectors who demand entry and are without probable cause and without a warrant authorizing entry." We must consider important practical aspects of the power of administrative officials to inspect dwelling houses in a reasonable manner either (a) to prevent, and warn against, conduct or conditions which may threaten the public health or safety, or (b) to obtain information about such conduct and conditions as a basis for later administrative action[3] (and possibly, to some extent, legislative action).

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in which local health . . . regulations are enforced . . . . The superior court shall have jurisdiction in equity to enforce . . . [the] code." The 1960 amendment added a provision that the "code may provide for the demolition, removal, repair or cleaning by local boards of health of any structure which so fails to comply with the standards of fitness for human habitation or other regulations in said code as to endanger or materially impair the health or well-being of the public."

[2] Regulation 3.1 provides, "In order . . . to carry out their . . . responsibilities under this code and . . . to protect the health and well-being of the people . . . the board of health and the Department of Public Health or the authorized . . . representative of either are authorized to enter, examine, or survey *at any reasonable time* such places as they consider necessary, and otherwise to conduct such examination or survey as is expressly provided in any other article. Any person who *wilfully, impedes or obstructs* an inspection or examination by the board of health or the Commissioner of Public Health or the authorized . . . representative of either in the discharge of his official duties shall be fined not less than ten nor more than fifty dollars" (emphasis supplied). By reg. 4.1, "each board of health may enforce this code by fine . . . or otherwise at law or in equity in the same manner that local . . . regulations are enforced."

[3] The amici curiae suggest that the issue is important in connection with programs of urban redevelopment, housing, slum clearance, rehabilitation of decadent areas, and other similar social projects.

The agreed facts may be summarized: "Pursuant to a [city] program of code enforcement . . . the objective of which was to reveal conditions in private dwellings that may endanger the health and well being of occupants due to unsanitary circumstances or fire hazards, a staff of inspectors had, prior to . . . [this] case, and by prearrangement with the occupants been entering and inspecting dwellings in the city. Prior to the announced plan to inspect the home of the defendant many homes in the city had been inspected. During . . . August 1964 the first announcement . . . of the city's intention to inspect was delivered . . . in [the] defendant's neighborhood . . . including . . . [his] single family dwelling. Other letters and cards were mailed to the defendant asking for an appointment. . . . [T]he defendant did not reply, but his wife would call the chairman of the code enforcement commission." A staff inspector "visited the site and asked about a time for inspection. [The d]efendant's wife asked what the inspectors would be looking for and if there was a complaint, or warrant to enter. The staff inspector assured her there was no specific complaint or warrant and that the city was inspecting all homes in the district as part of a program to insure compliance with sanitary and safety laws. . . . [She] stated she did not want to have the house inspected without a showing of probable cause or a complaint of specific violation. [The d]efendant and his wife stated they would permit an inspection by the code enforcement staff after repairs to the house . . . then underway . . . [were] completed. Later the defendant stated he would not agree to an inspection unless there were a showing of a specific complaint or unless a valid warrant to enter had issued." Since then, "additional demands have been made to gain entry by appointment and have been refused . . . . The [city] program of inspecting all homes by area . . . remains in operation . . . ."

1. Examination of the enactments authorizing the Sanitary Code, of the legislative history, and of the code itself indicates that the code's primary purpose from the beginning has been (a) to apply proper health and safety standards reasonably for the protection of the public in the prevention of violations, rather than (b) to punish past violations as criminal offences. See 1957 House Doc. No. 2833; 1965 House Doc. No. 4040 (esp. at pp. 54-55, see fn. 6, *infra*), a report in part the basis of St. 1965, c. 898, §§ 1, 3 (see 1965 House Bills Nos. 4441, 4449), which transferred the legislative authority for promulgating the code, formerly in G. L. c. 111, §5, to c. 111, §§ 127A-127J. This type of prevention appears to be the general objective of similar codes throughout the country. See Carlton, Landfield, and Loken, Enforcement of Municipal Housing Codes, 78 Harv. L. Rev. 801, esp. at pp. 806-809.[4] We interpret reg. 3.1 (fn. 2) as having this type of preventive objective. Only incidentally does it seem designed to provide a basis for criminal prosecutions of past violators.

2. Regulation 3.1 (fn. 2) in terms requires that any inspection pursuant to its provisions shall be at a "reasonable time." The Malden code enforcement inspector correctly interpreted this provision as requiring that he respect the convenience and privacy of the occupants of premises so far as practicable and consistent with the public interest in the circumstances. The area inspection now in progress does not appear to have been of an emergency character, and we do not now consider the greatly different

[4] See also annotation, 65 Col. L. Rev. 288. Area inspection programs to prevent future or continuing violations, rather than punishing past violations, are in some degree analogous to statutory programs of compulsory vaccination, designed to prevent the outbreak of smallpox. See G. L. c. 111, § 181; *Jacobson* v. *Massachusetts*, 197 U.S. 11, 24-39.

issues which might be created by emergency conditions.[5] We treat this case as one in which the code contemplated that such an area inspection would proceed in an orderly manner (but, of course, without undue delay) and with due consideration for the interests and privacy of occupants.

The enforcement inspector seems to have acted throughout with commendable respect for the defendant's privacy and convenience. Efforts to make an appointment for an inspection were continued patiently until the defendant unequivocally refused to cooperate at all in the absence of a warrant or a specific complaint. Even then, it was only after additional demands for entry with the defendant's consent that the inspector initiated a criminal complaint. The inspector has not attempted to enter without consent or by force, and we have, of course, no occasion to consider the use (in any unlikely prosecution of a past violation) of evidence obtained by means of the inspection. Cf. *People* v. *Laverne*, 14 N. Y. 2d 304. Cf. also annotation, 65 Col. L. Rev. 288, 293.

3. The statute and the code (see fns. 1, 2) would have permitted the inspector to seek, by bill in equity in the Superior Court, an order requiring the defendant to permit an inspection at a reasonable time. In such a proceeding the defendant would have been able to present, in his effort to defeat the issuance of an order, any available evidence (a) that the proposed inspection had no reasonable relation to the enforcement of the Sanitary Code, or was to be made

[5] The code (see reg. 5.1) deals with the special considerations which may affect emergencies. It reads in part: "Whenever an emergency exists which . . . requires that ordinary procedures be dispensed with, the board of health . . . acting in accordance with . . . [G. L. c. 111, § 30] may, without notice or hearing, issue an order reciting the . . . emergency and requiring . . . such action . . . as the board . . . deems necessary to meet the emergency. . . . [A]ny person to whom such order is directed shall comply therewith within the time specified . . . ." Cf. powers of police in an emergency. *United States* v. *Barone*, 330 F.2d 543, 544-545 (2d Cir.), cert. den. 377 U.S. 1004.

for purposes not within the scope of the code, (b) that it was undertaken without proper authority, or (c) that it was in some significant respect discriminatory, arbitrary, or capricious, or designed to harass the defendant. Such an equity proceeding, of course, would have been likely to involve some delay and more than nominal expense. The inspector thus reasonably may have thought that the criminal sanction under reg. 3.1 provided a simpler and less cumbersome method for encouraging the coöperation of the defendant through the imposition of a fine. See *Commonwealth* v. *Sostilio*, Mass. , .[5]

The present record contains no suggestion (a) that the area inspection was unauthorized, unreasonable,[6] or for any improper purpose, or designed to be a basis for any criminal prosecution (at least until after the defendant had reasonable opportunity to eliminate any violations which might be discovered and had failed to do so); or (b) that any discriminatory, arbitrary, or capricious action affecting the defendant or his property was proposed; or (c) that there was harassment. The defendant simply refuses to permit "[i]nspection without a warrant, as an adjunct to a regulatory scheme for the general welfare of the community and not as a means of enforcing the criminal law." See *Frank* v. *Maryland*, 359 U. S. 360, 367. See also *Eaton* v. *Price*, 168 Ohio St. 123, affirmed by an equally divided court, 364 U. S. 263.

4. The agreed facts present directly no question concerning what defences the defendant could have raised and what evidence he could have presented at the trial of a criminal complaint under reg. 3.1. The answers to these

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[5] Mass. Adv. Sh. (1966) 1337, 1339.

[6] In the article in 78 Harv. L. Rev. 801, 807, already cited, the advantages of area inspections in preventing violations and area deterioration are described in detail. This portion of this article was cited with apparent approval in 1965 House Doc. No. 4040, pp. 54-55.

questions, however, bear indirectly upon whether the criminal sanction in reg. 3.1 is a constitutionally valid method of encouraging consent to an administrative public health inspection. We think that reg. 3.1 does not make it an offence for an occupant to refuse to permit an unauthorized, unreasonable, or discriminatory inspection. Accordingly, we interpret the regulation as permitting a defendant, prosecuted under it, to prove any one or more of the defences which he could assert in equity in opposition to the granting of an order to permit an inspection. The general nature of these defences has already been stated.

The practical considerations supporting health inspections, discussed in the majority opinion in the *Frank* case, 359 U. S. 360, 371-372, and the result of that case, amply justify a prosecution for refusing to consent to an administrative inspection without a warrant of the type permitted by reg. 3.1 as we interpret it. To prevent, for the benefit of the whole community, health hazards and unsafe conditions likely to cause sickness, fires, and other casualties, such inspections are necessary in a modern urban civilization. We think that the Legislature, in authorizing the Sanitary Code, and the Department of Public Health, in promulgating reg. 3.1, have acted within constitutional limits. The result of the affirmation in the *Eaton* case, 364 U. S. 263, supports this view.[7]

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[7] Two cases, now pending before the Supreme Court of the United States, present questions generally similar to those considered in the *Frank* case. See *Camara* v. *Municipal Court*, 237 Cal. App. 2d 128 (U. S. Supr. Ct. Oct. term 1966, No. 92); *See* v. *Seattle*, 67 Wash. 2d 465, also 408 Pac. 2d. 262 (U. S. Supr. Ct. Oct. term 1966, No. 180). Probable jurisdiction was noted in these cases on October 11, 1966. See (1966) 35 U.S.L. Week 3124. Cases which in general are consistent with the *Frank* case include *Givner* v. *State*, 210 Md. 484, *St. Louis* v. *Evans* (Mo.), 337 S. W. 2d 948, 954-959, *Richards* v. *Columbia*, 227 S. C. 538, 556. See *Dederick* v. *Smith*, 88 N. H. 63, 71-73. See also *United States* v. *Rickenbacker*, 309 F.2d 462, 463 (2d Cir.) cert. den. 371 U. S. 962 (census inquiry); *State* v. *Rees*, Iowa, (139 N. W. 2d 406).

5. The provisions of G. L. c. 111 authorizing promulgation of the Sanitary Code (formerly § 5, and now §§ 127A, 127B) and regs. 3.1 and 4.1 (fn. 2) themselves make no explicit provision for a search warrant in circumstances such as those before us. These statutes and the regulations, however, permit the code enforcement inspector to use the procedures mentioned in G. L. c. 111, § 131 (governing the examination of premises for nuisances),[8] at least in those situations where there is reasonable ground to believe that a nuisance exists. See also c. 111, § 165 (inspection for pollution of water supplies).

Section 131 seems to have been drawn primarily to deal with investigations based on complaints of nuisances and situations where there is some evidence of an actual nuisance on particular premises. Nevertheless, the words "examine into and destroy . . . or prevent a nuisance," are very broad and may permit obtaining a warrant to enforce a purely preventive area inspection despite the circumstance that no nuisance is known to exist, or to be threatened, within the area. We assume, without deciding,

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[8] Section 131 reads, "If the board considers it necessary for preservation of life or health to enter any land, building or premises . . . to examine into and destroy, remove or prevent a nuisance, source of filth or cause of sickness, and the board . . . is refused such entry, any member of the board . . . may make complaint to a justice of any court of record or to a magistrate authorized to issue warrants, who may thereupon issue a warrant, directed to . . . [a] member or agent of the board . . . commanding him to take sufficient aid and at any reasonable time repair to the place where such nuisance . . . may be, and to destroy, remove or prevent the same, under the direction of the board." Cf. the provisions concerning inspections for the purpose of preventing fires. G. L. c. 148, § 4 (as amended through St. 1964, c. 123), § 5 (as amended through St. 1962, c. 456). The situation presented by the agreed facts does not appear to be one in which a search warrant could have been issued, on usual principles of "probable cause," under the statutes governing warrants in criminal cases. See G. L. c. 276, §§ 1-3A, inclusive, as amended. See also the cases collected in *Commonwealth* v. *Monosson*, Mass. , (Mass. Adv. Sh. [1966] 1225, 1226-1228).

that § 131 does authorize such a warrant, although it does not specify, as would have been desirable, (a) what criteria are to govern magistrates in issuing warrants for such inspections, or (b) whether a warrant may issue upon proof only that a reasonable, nondiscriminatory, public health area inspection has been authorized and is being undertaken and that entry has been refused.[9] Even if § 131 is thus construed, however, we think that neither (a) the statutes as supplemented by regs. 3.1 and 4.1, nor (b) general constitutional principles, in the light of the *Frank* case, 359 U. S. 360, 367, required the code enforcement inspector to have resort to § 131 to obtain a warrant. He was free to make use either of a bill in equity or the criminal sanction of reg. 3.1.

6. The defendant does not argue that, by denying admission, he did not "wilfully impede or obstruct" the inspector. Cf. *District of Columbia* v. *Little,* 339 U. S. 1, 4, 6-7, where the Supreme Court of the United States construed a somewhat comparable District regulation (penalizing, see p. 5, "interfering with or preventing" any inspection authorized by the regulations) as not making it an offence merely to decline to permit health officers to inspect.

Despite language of the *Little* case (holding that the word "interfere" in the regulation could not (p. 7) "fairly be interpreted to encompass [the] respondent's failure to unlock her door and her remonstrances on constitutional grounds"), we construe the somewhat different language of reg. 3.1 as designed to punish a definitive refusal to permit a reasonable and authorized inspection. We regard reg. 3.1

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[9] This type of proof might constitute a specialized type of modified "probable cause" adapted to general public health and fire inspections where the object of the inspection is merely precautionary and preventive. See Mr. Justice Brennan's discussion in *Eaton* v. *Price*, 364 U.S. 263, 271. See also the dissent in the *Frank* case, 359 U.S. 360, 374, 383; Waters, Rights of Entry in Administrative Officers, 27 U. of Chicago L. Rev. 79.

as comparable in purport to a statute (applicable to the District of Columbia and making it an offence to "hinder, prevent, or refuse to permit any lawful inspection"), distinguished in the *Little* case, 339 U. S. 1, 6 (see fn. 7), from the regulation directly there discussed.

7. We hold that, in the circumstances shown by the statement of agreed facts, the defendant's refusal to permit inspection was properly found to be in violation of reg. 3.1. The issue presented by the report is answered in the negative.

So ordered.

Louis M. Nordlinger for the defendant.

Loyd M. Starrett, Legal Assistant to the District Attorney (*Ruth I. Abrams,* Assistant District Attorney, with him), for the Commonwealth.

Lewis H. Weinstein & Judith L. Olans for Boston, Brookline, Cambridge, Malden & Worcester Redevelopment Authorities, amici curiae, joined in the Commonwealth's brief.

Max Rosenblatt, Assistant City Solicitor, for the City of Malden, amicus curiae, submitted a brief.

Appendix B

COMMONWEALTH OF MASSACHUSETTS

THIRD DISTRICT COURT OF EASTERN MIDDLESEX

Middlesex, ss. Criminal, No. A1764-1965

COMMONWEALTH

vs.

LEWIS F. HADLEY

REPORT TO THE SUPREME JUDICIAL COURT

In accordance with the provisions of General Laws (Ter. Ed.), Chapter 278, Section 30, I herewith report to the Supreme Judicial Court the question of law hereinafter set forth in the above entitled case.

This case came before me by appeal from The First District Court of Eastern Middlesex, from a finding of guilty on a complaint charging the defendant "did willfully impede or obstruct an inspection or examination by the Code Enforcement Inspector of the Board of Health in and upon certain premises located at 14 Holyoke Street in said City of Malden, in violation of regulation #3, Article #1 of the Sanitary Code".

Article I, Regulation 3.1 of the Sanitary Code, adopted by the Department of Public Health on September 13, 1960, provides as follows:

"In order properly to carry out their respective responsibilities under this Code and properly to protect the health and well being of the people of the Commonwealth, the Board of Health . . . or the authorized agent or representative of either are authorized to enter, examine, or survey at any reasonable time such places as they consider necessary, and otherwise to conduct such examination or survey as is expressly provided in any other article. Any person who wilfully impedes or obstructs an inspection or examination by the Board of Health . . . or the authorized agent or representative . . . in the discharge of his official duties shall be fined not less than $10.00 nor more than $50.00".

The defendant filed a waiver of his right to a trial by jury and was tried without a jury before me upon a Statement of Agreed Facts.

The defendant presented a motion for a finding of not guilty. I denied this motion and found the defendant guilty and imposed a fine of Fifty Dollars ($50.00). The defendant duly excepted to the denial of his motion and to my finding the defendant guilty.

The question of law which is herewith presented for determination by the Supreme Judicial Court is:—

WHETHER THE PROTECTIONS EMBODIED IN THE FOURTH AND THE FOURTEENTH AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES SHELTER THE OWNER-OCCUPIER OF A SINGLE FAMILY HOME FROM PROSECUTION FOR REFUSING TO ADMIT MUNICIPAL INSPECTORS WHO DEMAND ENTRY AND ARE WITHOUT PROBABLE CAUSE AND WITHOUT A WARRANT AUTHORIZING ENTRY.

I am of the opinion that the question of law herein set forth is so important or doubtful as to require the decision

of the Supreme Judicial Court and I have stayed further proceedings in this case and with the defendant consenting thereto, I herewith report the same to the Supreme Judicial Court for decision.

If, as a matter of law, the Court should have found the defendant not guilty, then such finding of guilty is to be set aside and the appropriate finding of not guilty ordered; otherwise, the finding of guilty is to stand.

HENRY P. CROWLEY, Special Justice
Third District Court of East Middlesex
Sitting pursuant to the provisions of
Chapter 628, Acts of 1964.

Filed March 25, 1966

THE COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

TO THE FIRST DISTRICT COURT OF EASTERN MIDDLESEX, holden at Malden, for the transaction of criminal business, within the County of Middlesex:

John F. Burke Code Enforcement Inspector of Malden in the County of Middlesex, in behalf of THE COMMONWEALTH OF MASSACHUSETTS, on oath complains that Lewis F. Hadley of Malden in the County of Middlesex, on or about the seventh day of June in the year of our Lord one thousand nine hundred and sixty-five at Malden, in the County of Middlesex, and within the judicial district of said Court, did wilfully impede or obstruct an inspection or examination by the Code *Endforcement* Inspector of the Board of Health in *an* upon certain premises located at 14 Holyoke Street in said City of Malden, in violation of regulation #3 article #1 of the Sanitary Code, against the peace of the said Commonwealth and the form of the statute in such case made and provided.

JOHN F. BURKE

FIRST DISTRICT COURT OF EASTERN MIDDLESEX
Received and sworn to, this twenty-second day of June in the year of our Lord one thousand nine hundred and sixty-five.

BEFORE SAID COURT,.....
JOHN P. MITCHELL, JR.
Deputy Assistant Clerk

A True Copy,
[SEAL]
Attest: ORRIN P. BARSTOW
Assistant Clerk of the First District Court of Eastern Middlesex

WAIVER OF TRIAL BY JURY.

Now comes the defendant in the above entitled cause and waives all of his rights to a trial by jury.

LEWIS F. HADLEY

Filed February 9, 1966

STATEMENT OF AGREED FACTS

Pursuant to a program of code enforcement undertaken by the city, the objective of which was to reveal conditions in private dwellings that may endanger the health and well being of occupants due to unsanitary circumstances or fire hazards, a staff of inspectors had, prior to the instant case, and by prearrangement with the occupants been entering and inspecting dwellings in the city. Prior to the announced plan to inspect the home of the defendant many homes in the city had been inspected.

During the month of August 1964 the first announcement, in writing, of the city's intention to inspect was delivered to the homes in defendant's neighborhood and including defendant's single family dwelling. Other letters and

cards were mailed to the defendant asking for an appointment. Upon receipt of these notices the defendant did not reply, but his wife would call the chairman of the code enforcement commission. One of the staff inspectors visited the site and asked about a time for inspection. Defendant's wife asked what the inspectors would be looking for and if there was a complaint, or warrant to enter. The staff inspector assured her there was no specific complaint or warrant and that the city was inspecting all homes in the district as part of a program to insure compliance with sanitary and safety laws. Defendant's wife stated she did not want to have the house inspected without a showing of probable cause or a complaint of specific violation. Defendant and his wife stated they would permit an inspection by the code enforcement staff after repairs to the house, which were then underway, would be completed. Later the defendant stated he would not agree to an inspection unless there were a showing of a specific complaint or unless a valid warrant to enter had issued.

Since that occurrence additional demands have been made to gain entry by appointment and have been refused by defendant. The program of inspecting all homes by area of the city has continued and remains in operation as of the date of filing this agreed statement of facts.

CARLOS VARZEAS
Assistant District Attorney
Counsel for the Commonwealth

LOUIS M. NORDLINGER
Counsel for Defendant
Filed Feb. 9, 1966

DEFENDANT'S MOTION FOR DIRECTED VERDICT

Now comes the defendant in the above entitled matter and moves that the court direct a verdict of not guilty, and as grounds therefor the defendant states there has been no showing by the Commonwealth that he has acted in an unlawful manner as charged in the complaint and there has been no showing that the persons alleged to have requested entrance into defendant's home had the authority to enter by reason of a warrant or probable cause, and the defendant submits that he is protected from such unwarranted and unreasonable entries and searches of his home by the provisions of the Fourteenth Article of Amendment to the Constitution of the United States and the Declaration of Rights of the Constitution of the Commonwealth of Massachusetts.

By his attorney,
LOUIS M. NORDLINGER

February 25, 1966 Filed in Court.
ALBERT H. BURNS
Assistant Clerk.

February 25, 1966 Denied by the Court.
CROWLEY, SP. J.

Defendant's Exceptions Saved.
CROWLEY, SP. J.

FINDING.

In the above complaint, the defendant having waived his right to a trial by jury (G. L., c. 263, Sec. 6, Ter. Ed.), I find the defendant guilty.

HENRY P. CROWLEY
Special Justice of the Third District
Court of Eastern Middlesex

1966, February, 25

DOCKET ENTRIES

ATTORNEY: LOUIS M. NORDLINGER
33 Mt. Vernon St., Boston
Complaint: Sanitary Code — Wilfully Impeding or Obstructing Inspection of Premises
DISTRICT COURT: MALDEN JUSTICE: L. G. BROOKS
District Court Plea: NG Finding: G
Disposition: Fine $50—Appeal
Complainants: John F. Burke Code Enforcement Inspector Malden

No. of Paper	Date of Entry	Docket Entries
1	1965, Oct. 20	Copy of Complaint
2	1965, Oct. 20	Recognizance
3	1965, Oct. 20	Record of Lower Court
4	1965, Oct. 20	Certificate of Transfer of Case from Superior Court to Jury of Six
	1965, Dec. 10	Continued to 1966, January 7
	1966, Jan. 7	Continued to 1966, February 8
	1966, Feb. 8	Continued to 1966, February 9
5	1966, Feb. 9	Jury Waiver Filed—Jury Waived
6	1966, Feb. 9	Statement of Agreed Facts—Filed Crowley, Sp. J.
	1966, Feb. 9	Continued to 1966, February 25
7	1966, Feb. 25	Defendant's Motion for Directed Verdict—Filed in Court Motion Denied Crowley, Sp. J. Defendant's Exceptions Saved Crowley, Sp. J.
8	1966, Feb. 25	Finding of Guilty Fine $50.00 Suspended Pending Reporting of Case to Supreme Judicial Court Crowley, Sp. J.
9	1966, Mar. 25	Report

Appendix C

The following chart illustrates the extent of code enforcement in 1965 in the approximately 19,000 dwelling units in the City of Malden.

Code	*Municipal Agency*	*Permits Issued*	*Inspections Conducted*	*Violations Noted*
Building	Building Inspector	655	655	100
Fire	Fire Inspection Division of Fire Department	615	1135	14
Sanitary	Code Enforcement Department	—	1404	989*
Plumbing and Gas	Plumbing Inspector	905	1810	70
Electrical	Electric Inspector	1531	7000	1500

* Of these, 967 or 97.8% were corrected during 1965.

Appendix D

The Secretary of the Department of Housing and Urban Development is required by section 101 (a) of Title I of the Housing Act of 1949, 48 Stat. 1246, as amended, 42 U.S.C. § 1701 *et seq.*, to

> "give consideration to the extent to which appropriate local public bodies have undertaken positive programs (through the adoption, modernization, administration and enforcement of housing, zoning, building, and other local laws, codes and regulations relating to land use and adequate standards of health, sanitation, and safety for buildings, including the use and occupancy of dwellings) for (1) preventing the spread or recurrence in the community of slums and blighted areas. . ."

Section 101 (c) makes the existence of a "workable program" for community improvement a condition precedent to any loan and grant contract, and the same section makes the existence and enforcement of adequate codes essential parts of a workable program:

> "[N]o workable program shall be certified or recertified unless (a) the locality has had in effect, for at least six months prior to such certification or recertification, a minimum standards housing code, related but not limited to health, sanitation, and occupancy requirements, which is deemed adequate by the Secretary and (b) the Secretary is satisfied that the locality is carrying out an effective program of enforcement to achieve compliance with such housing code."

The national policy which stresses local code enforcement and rehabilitation is emphasized and re-emphasized in the definitions of purposes to which Title I funds may be devoted. For example, section 110 (c) of Title I includes among the "undertakings and activities" which may comprise an urban renewal project

> "(5) carrying out plans for programs of code enforcement or voluntary repair and rehabilitation of buildings or other improvements in accordance with the urban renewal plan";

section 115 of Title I authorizes "rehabilitation grants" directly to individuals or families

> "for the purpose of covering the cost of repairs and improvements necessary to make such [individual or family's] structure conform to public standards for decent, safe, and sanitary housing as required by applicable codes or other requirements of the urban renewal plan for the area"; and

section 117 of Title I provides for "code enforcement" grants to municipalities

> "for the purpose of assisting such localities in carrying out programs of concentrated code enforcement in deteriorated or deteriorating areas. . ."

Finally, section 110 (c) evidences the national policy of maximizing the use of code enforcement and rehabilitation by requiring a special finding and also earmarking a substantial portion of the available money:

> "Notwithstanding any other provision of this title, (a) no contract shall be entered into for any loan

or capital grant under this title for any project which provides for demolition and removal of buildings and improvements unless the Administrator determines that the objectives of the urban renewal plan could not be achieved through rehabilitation of the project area, and (b) not less than 10 per centum of the aggregate amount of (i) grants authorized to be contracted for under this title by the Housing and Urban Development Act of 1965 and subsequent Acts, and (ii) loans authorized to be made under section 312 of the Housing Act of 1964, shall be available for projects assisted with such grants or loans which involve primarily code enforcement and rehabilitation."

The Massachusetts urban renewal statutes are in accord. Section 26WW of the Housing Authority Law (chapter 121 of the Massachusetts General Laws (Ter. Ed.)) provides in part as follows:

"It is hereby declared (a) that there exist in certain cities and towns in this commonwealth substandard, decadent or blighted open areas which constitute a serious and growing menace, injurious to the public health, safety, morals and welfare of the residents of the commonwealth, . . .(b) that, while certain of such areas, or portions thereof, may require acquisition and clearance because the state of deterioration may make impracticable the reclamation of such areas or portions by conservation or rehabilitation, others of such areas, or portions thereof, are in such condition that they may, through the means provided in sections twenty-six XX to twenty-six BBB, inclusive, be conserved or rehabilitated in such a manner that the conditions and evils hereinbefore enumerated may be alleviated or eliminated. . . ."

Thus section 26 YY of the Housing Authority Law defines "rehabilitation or conservation work" as including "the restoration and renewal of a substandard, decadent or blighted open area, or portion thereof, in accordance with an urban renewal plan by (1) carrying out plans for a program of voluntary repair and rehabilitation of buildings or other improvements. . ." An "urban renewal plan", as described in section 26 ZZ of the Housing Authority Law, may include rehabilitation. And by section 26AAA of the Housing Authority Law a redevelopment authority is "specifically authorized to make (i) plans for carrying out a program of voluntary repair and rehabilitation of buildings and improvements, and (ii) plans for the enforcement of laws, codes and regulations relating to . . . the compulsory repair, rehabilitation, demolition or removal of buildings and improvements."